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The Regents of the University of California

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

        Plaintiff,

        v.

UNIX SYSTEM LABORATORIES, INC.,

        Defendant.

_____/

No. 717864-3

COMPLAINT

Plaintiff The Regents of the University of California ("the University") alleges as follows:

1. Defendant Unix Systems Laboratories, Inc. ("USL") is a Delaware corporation with its principal place of business in Summit, New Jersey. USL is a majority-owned subsidiary of AT&T engaged in the development, manufacture, licensing and sale of computer software operating systems and related products and services. The University of California is a public trust created under Article IX, Section 9 of the California Constitution that is administered by The Regents of the University of California.

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2. Commencing in the 1970s, the University began developing software named the Berkeley Software Distribution ("BSD"). The BSD releases are a series of Unix-compatible software distributions that incorporate leading edge technology and are developed by the University of California Berkeley Computer Systems Research Group ("CSRG").

3. On or about March 4, 1986, the University and AT&T entered into a written license agreement for the use of the University's 4.2 BSD and 4.3 BSD computer programs and documentation, a copy of the agreement is attached here to as Exhibit A.

4. On or about May 4, 1989, the University and AT&T entered into a written license agreement for the use of the University's 4.3 BSD-Tahoe computer programs and documentation, a copy of which is attached hereto as Exhibit B. The University's 4.3 BSD-Tahoe computer programs and documentation were made available to USL under the same terms and conditions set forth in the March 4, 1986 agreement. (The 4.2 BSD, 4.3 BSD, and 4.3 BSD-Tahoe agreements will hereinafter be collectively referred to as the "BSD Agreements.")

5. AT&T licensed, for itself and its subsidiaries, the right to use and sublicense the University's BSD software for, among other purposes, the development of AT&T's (and subsequently USL's) commercial Unix Operating System. The price charged by the University for a license to use its BSD software and documentation was, and is, a nominal fee to cover the cost of production and shipping of the software and related documentation. The University has never licensed its BSD software for profit.

6. The BSD Agreements require that USL give the University proper credit and recognition for its use of any part of 4.2 BSD, 4.3 BSD, and 4.3 BSD-Tahoe in Paragraph 8 as follows:

> **Proper Credit and Recognition.** In the use of any part of 4.2 BSD and 4.3 BSD, AT&T will give appropriate credit to the University and the Electrical Engineering and Computer Sciences Department at the Berkeley Campus of the University of California and Other Contributors for their roles in its development and will require sublicensees to give such credit.
>
> If AT&T is providing documentation similar to that which is provided with 4.2 BSD and 4.3 BSD, notices similar to those included in that documentation suffice to satisfy this requirement. If AT&T is providing new documentation, this requirement will be satisfied if each document includes the following statement: 'This software and documentation is based in part on the Fourth Berkeley Software distribution under license from The Regents of the University of California. We acknowledge the following individuals and institutions for their role in its development: [insert names of individuals and institution s which appear in the documentation provided to AT&T as part of 4.2 BSD and 4.3 BSD for those portions of said Distribution used by AT&T.]'

7. In addition, in Paragraph 7 of the BSD Agreements, the University granted to AT&T and its subsidiaries the right to sublicense 4.2 BSD, 4.3 BSD, and 4.3 BSD-Tahoe to third parties as long as AT&T and its subsidiaries required its sublicensees to comply with the "Proper Credit and Recognition" obligations contained in Paragraph 8, referenced above. The University is informed and believes that USL has sublicensed 4.2 BSD, 4.3 BSD, and/or 4.3 BSD-Tahoe to sublicensees, including, but not limited to Silicon Graphics, Inc., the Santa Cruz Operation, Inc., and Intel Corporation, who have failed to give the University proper credit and recognition in the following documentation as required under Paragraph 8 of the BSD Agreements: Silicon Graphics' IRIX User's Reference Manual," Santa Cruz Operation's "Open Desktop Administrator's Guide," and Intel's "IBCS2."

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8. On or about November 1, 1989, AT&T assigned and transferred its rights to, among other things, System V, Release 4 of the Unix Operating System to USL. The University is informed and believes that AT&T assigned and transferred its rights under the BSD Agreements to USL.

9. The 4.3 BSD-Tahoe software expressly provides as follows:

Copyright (c) 1982, 1986 Regents of the University of California. All rights reserved.

Redistribution and use in source and binary forms are permitted provided that the above copyright notice and this paragraph are duplicated in all such forms and that any documentation, advertising materials, and other materials related to such distribution and use acknowledge that the software was developed by the University of California, Berkeley.

USL failed to include the University's copyright notice in its Unix System V, Release 4.

10. Substantial portions (perhaps as much as 50%) of the current version of USL's Unix Operating System, "System V, Release 4," is comprised of the University's BSD code. USL has paid no royalties for its use of the University's BSD software, although USL currently licenses its Unix Operating System for approximately $200,000. Although USL itself states, the Unix Operating System has become "one of the most highly regarded computer systems in the world," this is largely the result of BSD software developed by the University and its contributors which has been incorporated into USL's Unix Operating System. The only form of compensation the University required USL to provide (other than the nominal license fee) was credit and recognition to the University for its valuable software and related documentation. USL failed to provide the University with its due credit and recognition under the applicable license agreements.

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11. The University incorporates by reference the allegations set forth in Paragraphs 1 through 10 above, as if set forth in full herein.

12. The consideration given by USL for the University's grant of the right to use and sublicense the University's BSD software and documentation was, among other things, payment to the University of a nominal license fee and the provision by USL of proper credit, recognition, and notice to the University whenever USL used the University's BSD software and documentation.

13. The University has performed all conditions, covenants, and promises required of it on its part to be performed in accordance with the terms and conditions of the BSD Agreements.

14. USL has failed, and continues to fail, to perform the conditions of the BSD Agreements in that USL has failed to give the proper credit, recognition, and notice to the University for its use of BSD software and related documentation in USL's products as required under the BSD Agreements.

15. USL's widely distributed documentation contains portions of 4.2 BSD and/or 4.3 BSD code and documentation but these publications fail to provide the University with proper credit, recognition, and notice. The following documentation are but a few examples of USL's failure to perform its obligations under the BSD Agreements:

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a. Advanced System Administration, UNIX SVR4.2; attached hereto as Exhibit C are copies of the title page and acknowledgement portion of this documentation;

b. User's Guide, UNIX SVR4.2; attached hereto as Exhibit D are copies of the title page and acknowledgement portion of this documentation;

c. System Files and Devices Reference Manual for Motorola Processors (for Unix System V Release 4), attached hereto as Exhibit E are copies of the title page and acknowledgement portions of this documentation;

d. System V Application Binary Interface, Intel i860 Processor Supplement; attached hereto as Exhibit F are copies of the title page and acknowledgement portions of this documentation; and

e. System V Interface Definition, 3rd Edition; attached hereto as Exhibit G are copies of the title page and acknowledgment portion of this documentation. Exhibit G indicates that USL has failed to give the University the credit and recognition it is required to provide under the BSD Agreements because the only reference to the University are the words "(c) 1985 Regents of the University of California."

16. USL has failed to include the University's copyright notice in System V, Release 4 and related documentation.

17. USL's failure to give the University proper credit, recognition, notice for its use and reproduction of BSD software and documentation in the development of System V, Release 4 and related documentation has caused, and continues to cause, irreparable injury to the University. USL has caused harm to the

University's reputation by failing to give the University recognition for its academic, cutting-edge developments that have greatly contributed to the Unix community's evolution and vitality. The harm caused by USL to the University cannot be quantified in monetary terms. Moreover, an accurate assessment of damages is far too difficult and speculative. If USL fails to provide proper credit and recognition to the University, the University seeks an Order terminating the BSD Agreements which will require USL to "immediately destroy 4.2 BSD, 4.3 BSD, and 4.3 BSD-Tahoe and all copies thereof...and [USL] shall cease use and sublicensing thereof" as provided in Paragraph 2 of the BSD Agreements. For the reasons stated above, the University has no adequate legal remedy for its injuries and it, therefore, seeks specific performance of USL's obligations under the BSD Agreements.

SECOND CAUSE OF ACTION
(California Unfair Competition)
(Cal. Bus. & Prof. Code §§ 17200 and 17203]

18. The University incorporates by reference the allegations set forth in Paragraph 1 through 17 above, as if set forth in full herein.

19. USL's continuing distribution and sale of System V, Release 4 of the Unix Operating System (in source and object code form), and related documentation, without proper credit, recognition, and notice of the University's original work constitutes unlawful, unfair, and fraudulent business acts and practices, and unfair, deceptive, and misleading advertising within the meaning of California Business and Professions Code Section 17200. The acts and practices of USL have caused, and are likely to continue to cause, the public to be confused and misled as to the origin of the code contained in System V, Release 4 and related documentation.

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20. Without injunctive relief, the University has no means by which to control USL's dissemination of software and documentation which unfairly deprives the University of its due credit and which passes off portions of USL's System V, Release 4 and related documentation as its own. The University has been, and continues to be irreparably harmed by USL's unfair competition. No amount of money damages can adequately compensate the University if it is without the ability to prevent USL's continued wrongful acts. The University is entitled to injunctive relief prohibiting USL from such acts of unfair competition. In addition, the University is entitled to an Order requiring that USL disseminate corrective notice to USL's licensees and the public.

21. In addition, the University is entitled to recover its costs of suit and its attorneys' fees.

THIRD CAUSE OF ACTION
(False or Misleading Statements)
(Cal. Bus. & Prof. Code §§ 17500 and 17535]

22. The University incorporates by reference the allegations set forth in Paragraph 1 through 18 above, as if set forth in full herein.

23. USL's continuing distribution and sale of software and documentation that fails to notify USL's licensees, sublicensees, and the public that portions of USL's software and documentation contain, use, or are based in part on, the Fourth Berkeley Software Distribution under license from the University, constitutes false and misleading statements within the meaning of California Business and Professions Code Section 17500.

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24. USL's false and misleading statements have caused, and are likely to cause, the public to be confused, misled, and deceived.

25. USL knew, or in the exercise of reasonable care, should have known, that the acknowledgements, notice, and credit contained in its System V, Release 4 software and related documentation was, is, and continues to be, false and misleading. Notwithstanding USL's knowledge of its misleading statements, USL continues to distribute and sell the offending software and documentation.

26. Without injunctive relief, the University has no means by which to control USL's false and misleading statements to its licensees and the public and has been and will continue to be irreparably harmed. No amount of money damages can adequately compensate the University if it is without the ability to prevent such continued false and misleading statements. The University is entitled to injunctive relief prohibiting USL from continuing to make false and misleading statements to its licensees and the public. In addition, the University is entitled to an Order requiring USL to disseminate corrective notice to its licensees and the public.

27. In addition, the University is entitled to recover costs and attorneys' fees.

FOURTH CAUSE OF ACTION
(Declaratory Relief)

28. The University incorporates by reference the allegations set forth in Paragraphs 1 and 2 above, as if set forth in full herein.

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29. The University seeks a judicial determination that it is not in breach of its license agreements with USL for that version of the Unix Operating System identified as "UNIX 32V."

30. UNIX 32V was released by AT&T on or about 1978. AT&T granted the University the right to enhance, modify, and improve 32V and granted the University all ownership rights to such enhancements, modifications, and improvements. The University had the option to release to the public those enhancements, modifications, and improvements to UNIX 32V that did not contain AT&T code or disclose AT&T's trade secrets to non-AT&T licensees.

31. USL contends that the University materially breached the UNIX 32V license agreement when the University released software called "Net 2" to the public in July 1991. The University contends that its release of Net 2 did not materially breach the University's license agreement with USL.

32. There exists a substantial, present, justiciable controversy between the University and USL with respect to the parties' contractual rights and obligations under the UNIX 32V license agreements and related documents.

33. A judicial declaration is necessary and appropriate at this time so that the University and USL may ascertain their rights and duties under the applicable license agreements and related documents.

PRAYER FOR RELIEF

WHEREFORE, the University prays for judgment as follows:

(a) For an Order requiring USL, its agents, employees, successors, and assigns and all others in concert and privity with it to print corrective advertising, giving the University proper credit, recognition, and copyright notice, in all newspapers, periodicals, and other publications, in which USL regularly advertises the Unix Operating System and related products;

(b) For an Order requiring USL, its agents, employees, successors, and assigns and all others in concert and privity with it to distribute corrective notices, giving the University proper credit, recognition, and copyright notice, to all of its international and national licensees and sublicensees;

(c) For an Order requiring USL, its agents, employees, successors, and assigns and all others in concert and privity with it to give the University proper credit, recognition, and copyright notice in all future releases of the Unix Operating System and related documentation which contain, use, or are based on, 4.2 BSD, 4.3 BSD, or 4.3 BSD-Tahoe software and related documentation.

(d) For an Order permanently enjoining USL, its agents, employees, successors, and assigns and all others in concert and privity with it from making false and misleading statements regarding the origin of those portions of System V, Release 4 and related documentation that contain, use, or are based on, BSD software or documentation and from engaging in unfair and deceptive business acts and practices.

(e) For an Order that the BSD Agreements will terminate and USL will be required to immediately destroy 4.2 BSD, 4.3 BSD, and 4.3 BSD-Tahoe and all copies thereof and USL shall cease use and sublicensing thereof as provided in Paragraph 2 of the BSD Agreements if USL fails to provide proper credit and recognition to the University.

(f) For a declaration that the University did not breach the UNIX **32V** license agreements when the University released Net 2 to the public.

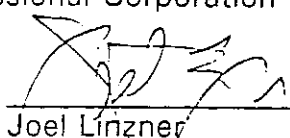(g) For an Order awarding the University costs of suit herein incurred;

(h) For an Order awarding the University reasonable attorneys' fees pursuant to contract and statute; and

(i) For such other further relief as the court may deem just and equitable.

DATED: June _‖_, 1993.

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By _____
Joel Linzner
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The Regents of the
University of California